

**NOMINATIONS OF: RONALD A. ROSENFELD,
EMIL HENRY, AND PATRICK M. O'BRIEN**

HEARINGS
BEFORE THE
COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE
ONE HUNDRED NINTH CONGRESS
FIRST SESSION

ON

NOMINATIONS OF:

RONALD A. ROSENFELD, OF OKLAHOMA, TO BE A DIRECTOR OF THE FEDERAL
HOUSING FINANCE BOARD

EMIL HENRY, OF NEW YORK, TO BE ASSISTANT SECRETARY FOR FINANCIAL
INSTITUTIONS, U.S. DEPARTMENT OF THE TREASURY

PATRICK M. O'BRIEN, OF UTAH, TO BE ASSISTANT SECRETARY FOR TERRORIST
FINANCING, U.S. DEPARTMENT OF THE TREASURY

MARCH 1 AND SEPTEMBER 20, 2005

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NOMINATION OF RONALD A. ROSENFELD OF OKLAHOMA, TO BE DIRECTOR OF THE FEDERAL HOUSING FINANCE BOARD

TUESDAY, MARCH 1, 2005

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS,
Washington, DC.

The Committee met at 2:13 p.m., in room SD-538, Dirksen Senate Office Building, Senator Richard C. Shelby (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN RICHARD C. SHELBY

Chairman SHELBY. The hearing will come to order.

Sorry I am late. We had a conference, Mr. Rosenfeld, Governor Keating, and some days, you cannot get out of it.

This afternoon, the Committee meets to consider the nomination of Mr. Ronald A. Rosenfeld to be a Member of the Board of the Federal Housing Finance Board. I appreciate Mr. Rosenfeld's willingness to appear before the Committee today.

Mr. Rosenfeld, as you all know, received a recess appointment to the Finance Board and was designated Chairman by the President. Given the importance of this position, I think we all understood the Administration's need to move quickly on this nomination.

The Federal Housing Finance Board oversees the Federal Home Loan Bank System. The 12 member Banks of the Federal Home Loan Bank System constitute an important source of liquidity for our Nation's financial institutions, helping to indirectly finance mortgages, small business and agricultural loans across the country. As vital as these institutions are to the financial health of our Nation, I believe that it is as vital that these institutions have effective regulatory oversight.

Improving the regulatory oversight of the Federal Home Loan Bank System has been an important component of this Committee's efforts to strengthen the regulation of the Nation's housing Government Sponsored Enterprises, GSE's. It is the Committee's intention to bring Mr. Rosenfeld back before the Committee as we consider legislative proposals, Mr. Rosenfeld, to improve the regulation of the housing GSE's. We talked about this in my office. The Committee's intention at that time is to examine the overall condition of the Federal Home Loan Bank System, among other things.

Mr. Rosenfeld, you bring a long career of both public and private experience to the Federal Housing Finance Board. Most recently, you served as President of Ginnie Mae, the Government National

Mortgage Association. Your previous Federal service includes serving as Deputy Assistant Secretary for Corporate Finance at the Department of the Treasury.

You have also had several positions at the Department of Housing and Urban Development, including General Deputy Assistant Secretary for Housing, Acting Deputy Assistant Secretary for Multi-Family Housing and Deputy Assistant Secretary for Single-Family Housing. Clearly, you bring a great deal of expertise regarding housing and mortgage finance policy to the Finance Board.

Your knowledge of housing and mortgage finance does not solely come from the public sector but also from your long-term involvement in the development of both single-family and multi-family homes in this country.

I would also note Mr. Rosenfeld's service in State government. He held the office of Secretary of Commerce in the State of Oklahoma. Mr. Rosenfeld is a graduate of the Wharton School at the University of Pennsylvania and the Harvard Law School.

Upon his designation as Chairman, you succeed Ms. Alicia Castaneda. I want to thank her and acknowledge her service chairing the Finance Board. I am also happy to hear that she will remain on the Board.

I want to thank you, Mr. Rosenfeld for appearing before the Committee today, and after hearing from Senator Sarbanes, I would want to administer the oath to you.

Senator Sarbanes.

STATEMENT OF SENATOR PAUL S. SARBANES

Senator SARBANES. Thank you very much, Mr. Chairman. Unfortunately, I am going to have to depart because of a conflict in schedule, but I did want to be here to join with you, Mr. Chairman, in welcoming Ronald Rosenfeld before the Committee. As the Chairman said, he is being nominated to serve on the Federal Housing Finance Board and has been designated by the President to be its Chairman. Mr. Rosenfeld brings with him a great deal of relevant experience.

He has spent much of his career on housing and real estate sector and a number of Government positions. In the Administration of the first President Bush, Mr. Rosenfeld was the Deputy Assistant Secretary for Single-Family Housing and the Deputy Federal Housing Commissioner HUD and was the Deputy Assistant Secretary for Corporate Finance at the Treasury Department. Most recently, he served as President of Ginnie Mae.

The President of the Federal Housing Finance Board, which is the regulator of the Federal Home Loan Bank System, has a very important and challenging responsibility. The System is experiencing rapid growth. The System's assets now total almost \$900 billion, compared with \$350 billion in 1997, just 8 years ago. In addition, the Federal Home Loan Banks are one of the world's largest issuers of debt. At the end of June 2004, the System had \$816 billion in debt outstanding, an increase of more than \$100 billion from a year earlier. There are now two Federal Home Loan Banks, the Chicago and Seattle Banks, that are operating under supervisory agreements, so there are obviously some real challenges with respect to the Federal Home Loan Bank System, and I am hopeful

that Mr. Rosenfeld's extensive knowledge of the mortgage markets will serve the country well in his responsibilities at the Finance Board.

Thank you, Mr. Chairman.

Chairman SHELBY. Senator Martinez.

STATEMENT OF SENATOR MEL MARTINEZ

Senator MARTINEZ. Mr. Chairman, good afternoon. It is a real honor for me to participate in this hearing. Mr. Rosenfeld, I had the great honor and privilege to have him work while I was at the Department of Urban Development as the President of Ginnie Mae, and I hold him in high regard, and it is really a pleasure to welcome him to the Committee, Mr. Rosenfeld, and to also speak on his confirmation.

I believe one of the most important attributes of the Chairman of the Federal Housing Finance Board is that the person have an intimate knowledge of the housing market. He must also understand the speed at which it changes and can effectively oversee both the safety and the soundness of the mission compliance of the entities that it regulates.

I believe that Mr. Rosenfeld is extremely qualified to succeed in this position. Under his leadership at Ginnie Mae, he developed new programs and implemented several significant changes that improved industry process. His accomplishments include passage of the Soldiers and Sailors Civil Relief Act, which required all mortgage lenders to limit the interest rates on mortgage debt to 6 percent for military personnel called to active duty. He launched a campaign that saves the industry \$27 million annually by streamlining documentation requirements, and internal procedures, and under his leadership, Ginnie Mae began securitizing loans guaranteed by the Veterans Administration and the Federal Housing Administration.

The Federal Home Loan Bank System plays a critical role in our Nation's housing market. By working with the 8,000 member financial institutions across the country, the Federal Home Loan Banks ensure that the liquidity needed for residential mortgage lending is available and affordable. The Federal Home Loan Banks, however, have also grown substantially in size over the last decade. The 12 banks together form a \$900 billion system, and legislative changes implemented during the Gramm-Leach-Bliley opened up membership in the Federal Home Loan Banks, changed the capital structure to a risk-based model and also made significant changes to the banks' collateral structure to ease the flow of liquidity to our communities.

I have known you, sir, and I respect you greatly for your work, and I look forward to working with you and with this Committee after your confirmation so that we can move forward also on legislation to strengthen the regulatory oversight of the housing Government Sponsored Enterprises. So thank you very much for your willingness to continue serving, Mr. Rosenfeld.

Chairman SHELBY. Governor Keating, welcome to the Committee. I assume you are here to say a few words about someone you know real well, so you proceed as you wish.

**STATEMENT OF FRANK KEATING
FORMER GOVERNOR, STATE OF OKLAHOMA**

Governor Keating. Mr. Chairman and Senator Martinez, thank you very much for giving me this opportunity to participate in the presentation of Ronnie Rosenfeld to the Committee. This is Mr. Rosenfeld's second Senate confirmation. You have noted, Mr. Chairman, that he was confirmed earlier as President of the Government National Mortgage Association. I have known Ronnie Rosenfeld since the late 1980's. We served together at HUD. As you noted, he was a Deputy Assistant Secretary of HUD as well as a Deputy Assistant Secretary of the Department of the Treasury.

He also came to Oklahoma during my first term and served as Secretary of Commerce with enormous skill, integrity, and ingenuity. I know Congressman Tom Cole would join me, who is here today, in encouraging the Committee to act favorably on the Rosenfeld nomination.

I want to note, Mr. Chairman, if I may, that Mr. Rosenfeld and I have traveled the world on economic development missions. I have known him intimately. He is one of those unique persons—I think Senator Martinez knows this—who has been extraordinarily successful in business, but he also loves his country dearly and deeply and wants to give back as much as he can. And to serve the Government, to serve the Administration, and to serve the public as he is is a great calling, and in my judgment, he will serve with absolute integrity, with energy, with ingenuity, with enterprise, and bring great credit to the office to which he is seeking confirmation, to his family and friends, and to the U.S. Senate, which hopefully will confirm him.

I cannot think of any more wonderful human being than Ronnie Rosenfeld to be considered for this position, and I am very grateful to the President for nominating him and, of course, to this Committee for considering him, and I will now turn it over to him for a few remarks, but I will sit back where I belong, and I thank you so much, Mr. Chairman.

Chairman SHELBY. Thank you, Governor Keating.

Mr. Rosenfeld, will you stand and raise your right hand and be sworn?

[Witness sworn.]

Chairman SHELBY. You can be seated. Do you want to introduce any members of the family? You can do that for the record.

**STATEMENT OF RONALD A. ROSENFELD
TO BE DIRECTOR OF
THE FEDERAL HOUSING FINANCE BOARD**

Mr. ROSENFELD. Let me please begin by introducing members of my family. The number one person in my life is my wife, Patty, right here.

[Laughter.]

Chairman SHELBY. Very good.

Mr. ROSENFELD. Seated next to her is my son, David. David is one of our six children. The other five are scattered throughout the world along with eight grandchildren.

Chairman SHELBY. Wonderful.

Mr. ROSENFELD. And I would like to introduce some very dear friends and colleagues who serve in public service. We also have a number of wonderful friends here who are not in public service. Let me confine my introductions to public servants: Stillman Knight, the Deputy Assistant Secretary for Multi-Family Housing at HUD, Congressman Tom Cole from the Fourth District of Oklahoma, and I have some colleagues from Ginnie Mae, my former home for the past 3 and a half years, Mike Franz and Cheryl Owens, and our Counsel, John Kennedy.

Chairman SHELBY. You have them all here.

[Laughter.]

Mr. ROSENFELD. I want you to know that in Ginnie Mae, you do have a wonderful, first-class organization, and I am really very proud to have been associated with them.

Chairman SHELBY. You proceed as you wish. Your written testimony will be made a part of the record.

Mr. ROSENFELD. Thank you, sir.

Chairman SHELBY. We want to confirm you as soon as we can.

Mr. ROSENFELD. Okay.

[Laughter.]

Chairman SHELBY. A lot of nominees would like to hear that from our Committee.

Mr. ROSENFELD. Mr. Chairman, Senator Martinez, I want to express my appreciation for the opportunity to appear before you today and to extend my deepest gratitude to President George W. Bush for nominating me to be a Director of the Federal Housing Finance Board. It has been just about 3 and a half years ago that I appeared before this Committee—

Chairman SHELBY. Bring your mike up closer to you.

Mr. ROSENFELD. It has been just about 3 and a half years ago that I appeared before this Committee seeking confirmation to be the President of Ginnie Mae. Let me assure you that I approach this new honor with equally great enthusiasm and even more relevant experience.

I realize that in citing one's extensive experience, it carries with it an acknowledgement of one's age. Having started in my business career as a "borrower" by virtue of being a real estate developer, then moving on to be a "provider of capital" by participating in the investment banking industry, and then becoming a "source of credit enhancement" while serving HUD as Deputy FHA Commissioner and most recently as President of Ginnie Mae, and now, if I am confirmed, becoming a "regulator" as a Director of the Federal Housing Finance Board, it is not unreasonable that this journey has taken 40 years.

Chairman SHELBY. As Chairman of the Board. Go ahead.

Mr. ROSENFELD. While bringing experience to the Board is valuable, it should not be one's sole contribution. Bringing a sense of balance is equally important. We want the 12 Federal Home Loan Banks to do business, but that goal needs to be tempered by operating in a safe and sound manner, while ensuring that the Banks carry out their housing finance mission. We want the Banks to take advantage of their GSE status, but we do not want them to abuse it. We want the Banks to enjoy the fruits of their cooperative structure, but we also want them to treat each other fairly. While

these statements are generalities, they also are the principles that will guide us.

We, in the United States, are the envy of the world when it comes to a housing finance system, and the Federal Home Loan Banks have been an integral part of that success. Acknowledging the wisdom of Congress in creating the FHA in 1934, our success in enhancing homeownership opportunities arises from the evolving structure of organizations that comprise the housing finance system. Having been created in 1932, the Federal Home Loan Banks must continue their evolution in response to the circumstances that now exist. Meeting today's desire for home mortgage credit and community development needs merits our best effort.

The Federal Home Loan Bank System has proven to be a vital source of support for community-based financial institutions by facilitating their access to credit. It is my belief that the viability of local communities and the efforts of small business people constitute two of the major pillars of our society. Without community financial institutions, this would not be the case.

My belief is based upon two important events in my own life. Starting out in business as an undercapitalized home builder, I needed a lender that would consider "character" when making a loan since I did not have much other collateral to offer. My early lenders were all community-based institutions. The other experience was gained while being Secretary of Commerce of Oklahoma. The wonderful people of small town and rural America need community financial institutions, period. It is absolutely necessary that the viability of the Federal Home Loan Bank System be sustained.

If I am confirmed, I pledge to President Bush and to Members of this Committee that I will do my very best to ensure that the Federal Home Loan Bank System will be managed in a prudent manner, recognizing its purpose in the current environment in which it operates.

Thank you.

Chairman SHELBY. Thank you, Mr. Rosenfeld.

I have a number of questions. I will try to move them on. The future of the Federal Home Loan Bank System, we talk about that a lot, and as you well know, we are considering legislation dealing with GSE's, including Fannie Mae, Freddie Mac, and the Federal Home Loan Bank System, and we are planning to ask you to come back up to help us learn more about the challenge that we are facing, and you have indicated you would do that.

The Federal Home Loan Bank System has undergone a tremendous amount of change since its birth in 1933. You of all people know that. With the decline of the thrift industry, membership in the System was expanded beyond the savings and loans. With this expansion of membership has come an expansion of responsibilities and also challenges. What do you see as the future direction of the System?

Safety and soundness has to be number one.

Mr. ROSENFELD. I think the system will continue to perform an enormously significant function in providing liquidity for housing needs and community needs in our financial institutions, particularly the smaller financial institutions. I think that the providing of capital needs, as you indicated, in a safe and sound manner, I

think there are a number of activities in which the Federal Home Loan Banks have been involved which merit a review and certainly a constant awareness of how they are progressing, and we have to keep in mind that this growth must always be tempered with it being consistent with our mission and executed, as you point out again, in a safe and sound fashion.

I have no concern about the need for the System nor the fact that it will exist, but as a regulator, one is always concerned about how it is done and that it be done properly.

Chairman SHELBY. Serving on the Finance Board, I believe, is your first experience as a regulator.

Mr. ROSENFELD. Yes, it is.

Chairman SHELBY. Often in the past, the Finance Board has played the role of a cheerleader, in a sense, for the System as well as a regulator. Could you distinguish for the record here, for the Committee hearing record, what in your mind separates the responsibilities of a regulator like the Finance Board from an organization like Ginnie Mae.

Mr. ROSENFELD. In the case of Ginnie Mae, as in the case of any business, and Ginnie Mae is a business.

Chairman SHELBY. Sure.

Mr. ROSENFELD. It is a well-run business, and it makes a substantial amount of money every year. And it would like to do more business, and it would like to make more money. I am very familiar with what it is to run a profit-making business. It is an entirely different world from being a regulator. The objectives, are, quite frankly, quite different. The purpose is quite different.

Chairman SHELBY. And should be quite different.

Mr. ROSENFELD. They should be quite different, and I think that a regulator has a lot of responsibilities.

By all means, they should be supportive, but they should not be a cheerleader. And if I may use the term, as a regulator, I will tend to be, if I am confirmed, a strict constructionist in sticking close to the book as opposed to being an advocate of unsound growth.

Chairman SHELBY. There has been some concern about the concentration of advances within the Federal Home Loan Bank System. Something like 2 percent of members account for over 40 percent of all advances. Could such a high concentration of advance usage present any safety and soundness concerns for the System?

Mr. ROSENFELD. I really do not believe that they present safety and soundness issues. I think—you are raising, a very significant point here, and that is that if you look at—in terms of dollar advances, there is an enormous concentration of dollar loans to big banks. On the other hand, if you look at concentration in the sense of the number of banks with which we deal, as we sit here, we deal with about 5,000 banks who currently, as we speak, are doing business with one of a number of Federal Home Loan Banks.

So we do have a concentration of dollars but not necessarily a concentration of business relationships. The reason I am not concerned about the safety and soundness in the sense of those advances is the advance business is fundamentally a very secure business. You are advancing funds against appropriate security. The purpose that those institutions serve in terms of providing liquidity to home finance is consistent with our mission. So that, in

and of itself, does not present a safety and soundness issue, as far as I am concerned.

Chairman SHELBY. Does it present anything dealing with corporate governance of the individual Federal Home Loan Banks?

Mr. ROSENFELD. Yes, it does, given the nature of the governance structure of the boards, and from time to time, these larger banks may have some disproportionate either bargaining power or governance power that is something one has to be very cognizant of.

Chairman SHELBY. Senator Martinez. I want to call him the Secretary, but we will stop that.

Mr. ROSENFELD. I might.

Senator MARTINEZ. I am just getting used to not being called Secretary. Anyway, thank you, Mr. Chairman.

Mr. Rosenfeld, shortly after your nomination to the Federal Housing Finance Board, there was an announcement by you of new appointments or rather not making new appointments but simply reappointing or extending those directors whose terms would expire in the year 2004 for 6 months, and then, shortly after that, it was rescinded. Would you care to explain to the Committee the circumstances surrounding that?

Mr. ROSENFELD. Yes, Senator. I could respond to a friend by saying it was my way of getting away from obscurity but—

[Laughter.]

—there is really more to it than that.

When I got to my position as an appointee under the recess process program, it became very apparent that the appointment of public interest directors or outside directors, is another way to put it, the process was not working in the context of what the banks had become. The banks had become much larger, as was noted earlier, and certainly, they had become much more sophisticated.

And the process of appointments of outside directors and public interest directors historically had been really more in the nature of an honorarium type thing or a reward for some particular relationship or service. That simply was not a prudent basis of providing governance for these institutions. When I got there, I was informed that approximately 30 outside directors terms were expiring on December 31. And we felt that it was not prudent, given lack of an appropriate process to merely reappoint them or somebody else in their place with whom we had not had the opportunity of really venting their qualifications.

So based upon the opinion of my deputy counsel and the head of our Office of Supervision, we made a determination that we would have the retiring directors hold over for a period not to exceed 6 months, the theory being that it would give us the opportunity to perhaps work out a more appropriate process and yet not lose the benefit of the experience and talent that was currently sitting in these seats. Particularly, there were, I believe, 9 of the 30 expiring terms were either chairmen or vice-chairmen of their respective bank boards.

Having made that determination, I believe it was December 30 that we then sent out a notice to the banks indicating that these bank directors whose terms were expiring could be held over for a period not to exceed 6 months. Thereafter, I received a call from White House Counsel asking me if I would have any objection to

forwarding a copy of what we had done to the Justice Department, which my answer, of course, was I would be happy to do it, and we did.

And sometime thereafter, the Justice Department notified White House Counsel that we did not have the authority to create hold-over positions. We were so advised that that was the situation. At that point, the board agreed with me that we needed to rescind that order, and we did rescind it.

We are now in the process of attempting to develop an appropriate process for public interest or outside directors. While we are not waiting until legislation occurs, because it may not occur, I would make note to you, Senator, that in the legislation, as we have seen it, it suggests that the appointment process not be done by the regulator but by the banks and that the salary caps on the directors be removed. Those are very significant improvements in the structure if they were to occur.

Senator MARTINEZ. Mr. Rosenfeld, one further question in the remaining moments I have. The Federal Housing Finance Board normally has the authority to preapprove new products and programs that the Banks wish to engage in also but also designates a trial period to make sure that those programs will be successful before full implementation. So prior to it undertaking a program, they seek your approval, and then, there is even a trial period before it can be fully implemented.

And I wanted to find out from you how long it takes for this process, if you know, and additionally, whether or not, in any sense, has there been any feedback that this process stifles innovation or in any way diminishes the Banks' ability to compete in the marketplace.

Mr. ROSENFELD. Senator, I do not know how long it takes. That issue has not come before me at this point. But I think I can respond to your question in that I think it is very important that a regulator, including the Federal Housing Finance Board, have the ability to approve new business activities on the part of the 12 Banks.

It is important for a variety of reasons; number one, I think it is important that the new activity be consistent with our basic business mission; number two, it is something that can be operated and governed in a safe and sound way; and number three, it does not expose us to excessive risk. Does it slow down progress or the ability of an institution to make money? Probably, it does, but I think that is a worthwhile cautionary analysis that is well-taken, because at the end of the day, as I think we all realize, we are dealing in a large sense of the word with our money. It is not their money; it is our money, and our money, I think, merits a kind of scrutiny and review that we would all like to see our money have when people are thinking about doing something with it.

So, I do think a regulator needs that approval.

Senator MARTINEZ. Thank you, Mr. Chairman.

Chairman SHELBY. Senator Allard.

STATEMENT OF SENATOR WAYNE ALLARD

Senator ALLARD. Mr. Chairman, thank you. I do have some comments I would like to put in the record.

Chairman SHELBY. Without objection, it will be made part of the record.

Senator ALLARD. So, Mr. Rosenfeld, generally, I think you are good nominee, and that is basically what I have said in the comments I have just submitted in the record. I think you have a proven record, and I think you will do a good job at the Federal Housing Finance Board.

My question is one of concern on the secondary mortgage markets. You have had some experience there. And I have always felt that we needed to have more competition in that area. Even from an economic development point of view in the State, I do not like to see you put all the eggs in one basket, or even in business, I do not think it is a good idea to put all your eggs in one basket.

In effect, that seems to be what is happening now, where we are putting maybe too many eggs in just a few basket, as far as the secondary markets are concerned. As you know, I have introduced proposals such as the Ginnie Mae Choice legislation to promote greater competition. As we are considering reform of the GSE's, many Members are considering various proposals to promote competition.

I want to hear your general views about competition. Do you think it benefits consumers, and would you comment on how you think competition might help us in the secondary market, if at all?

Mr. ROSENFELD. Senator, first of all, let me thank you for your kind words, but as a general matter, I believe that competition is good. I think in the vast majority, not necessarily all, but the vast majority of cases, competition has benefitted the consumer.

I think when you are dealing with GSE's, you are dealing with a very special creation of the Congress, and I think that that creation must be looked at in the context of what Congress wants the system to be like. This is not a question of a retailer being added to a market that may have been a quasimonopoly. This is a different structure. And I think specifically what we are talking about here is in the secondary mortgage market, you have Fannie Mae, Freddie Mac, and Ginnie Mae, and in the conventional market, you have Fannie Mae and Freddie Mac.

I think, quite frankly, that whether that field should be broadened with another participant doing roughly the same thing is really a matter for the Congress. I have enormous respect for what Congress has created, and to materially change the relationship that creates the secondary mortgage market, I think should go back to the architect of the original project, which is the Congress.

Senator ALLARD. You know, there is an implied guarantee there, because they have just gotten so big and so important that they fall into the issue of too big to fail. I think many of us worry about future obligations out here. I am not saying that we are anywhere near a crisis or anything with these organizations; in fact, I think they have done a lot to make sure that we have adequate housing in this country. We have to recognize the role that they have played in making sure that we have enough housing. We are at historic homeownership rates right now.

But I guess I would like to have some assurance that you would be willing to work with us, lend some suggestions, maybe some criticism as we work on some of these proposals.

Mr. ROSENFELD. Not only, Senator, would I be willing to work with you, but I would also enjoy working with you. One of the great privileges of having the opportunity that I will have if I am confirmed is to do exactly that, so I would look forward to it.

Senator ALLARD. Now, let me get down to the Federal Home Loan Bank's Affordable Housing Program. It has been, I think, an important source of affordable housing and ownership in this country. I would like to have your assessment of the program, whether you believe it is working well or not. Do you believe there are any areas of the program which we could improve? And I think the second part of that question is the most important. I would really like to get your honest assessment about it and if there are any areas that you think could improve. I would also like to know if there is improvement that is needed, whether there is something we can do in this Committee that would help that happen.

Mr. ROSENFELD. I think that as a general proposition, what you refer to is our Affordable Housing Program, which for the benefit of those, perhaps in the audience, who do not know what that is, 10 percent of the profits of the Federal Home Loan Bank System go to affordable housing in the form of grants, low interest rate loans, or some subsidy.

It is my understanding, and again, I have only been there a relatively short time, is that this program has really been enormously successful. We had the privilege of meeting with some community groups not too long ago, and by and large, their feeling was almost unanimous that these programs have worked quite well. I think one of the benefits of our program and our structure is the fact that we deal in dollars. We make dollars, and we spend dollars as opposed to making dollars and trying to meet some mission goal, which is a little tougher to do. And I think our program is relatively clean and crisp.

Senator ALLARD. From a safety and soundness standpoint, you are comfortable with it, then.

Mr. ROSENFELD. Oh yes.

Senator ALLARD. Is that what you are saying by clean and crisp?

Mr. ROSENFELD. Well, we have a clean, competitive program—

Senator ALLARD. I see.

Mr. ROSENFELD. —of people who want the benefits of these funds that will be given out. They are dealt with in a businesslike way. Their proposals are well-screened, well-thought-out and so on. So it is well-executed. And, quite frankly, of the various issues that have come under some degree of criticism since I have been at the Federal Housing Finance Board, the Affordable Housing Program has not. It is almost universally well-regarded.

However, in answer to the second part of your question, yes, I think it can be improved. I can tell you we are bringing some people on board, and we are looking very carefully at exactly the appropriateness of where some of these dollars are going, how much leverage we are getting out of them. We are finding that in some of the Banks, they have come up with criteria that may be inconsistent with other programs. One of my friends, Gabe Mehreteab, from the NHP Foundation pointed out to us the other day that there are some serious inconsistencies between the programs of various banks and HUD programs, so we are looking at that thing.

The other area that I think merits some attention: As you know, bank charters have tended to move around in the last number of years, and the AHP contributions normally go where the charter is as opposed to where the bank may do its business. And there is some potential there for some improvement in terms of how the benefits of the program, perhaps can be more equitably assigned.

Senator ALLARD. Thank you. Since I brought up the safety and soundness, you are comfortable with safety and soundness provisions that we have in that program right now?

Mr. ROSENFELD. You mean in the AHP?

Senator ALLARD. Yes.

Mr. ROSENFELD. Yes, I am generally comfortable with that.

Senator ALLARD. Generally with the Federal Home Loan Banks, you are okay?

Mr. ROSENFELD. Senator, as a regulator, I suspect I will never be comfortable, but I will sleep tonight.

[Laughter.]

Senator ALLARD. Thank you for being willing to serve. I appreciate it, and thank you, Mr. Chairman.

Chairman SHELBY. Mr. Rosenfeld, I have another question for you and maybe a couple for the record.

Mr. ROSENFELD. Sure.

Chairman SHELBY. But I will not hold up your confirmation.

Perhaps the largest financial risk that I see facing all the housing GSE's is the interest rate risk. It is always there. In the recent past, the Federal Home Loan Banks began purchasing mortgages from their members. This has increased their risk profile. The management of interest rate risk has presented several Federal Home Loan Banks with accounting and financing difficulties, as you are very aware.

Are you satisfied at this point, or maybe you have not been there long enough, with the risk management techniques of the Federal Housing Finance Board, of the members, and are you going to be getting into the details of all of this as a regulator?

Mr. ROSENFELD. Senator Shelby, let me assure you we will be very active in getting into these programs. I concur with your opinion that the major risk in the Federal Home Loan Bank System is interest rate risk in these mortgage programs, and they are a matter of concern to us as they should be, but I assure you that we will be very vigilant in really getting into them and making sure that they do not create a risk beyond what may be appropriate.

Chairman SHELBY. And we look forward to having you come up at a properly called hearing as we formulate the GSE legislation, because your input, I think, would be welcome.

Mr. ROSENFELD. Thank you.

Chairman SHELBY. Thank you for your appearance today. We will expedite your nomination as soon as we can.

The hearing is adjourned.

[Whereupon, at 2:52 p.m., the hearing was adjourned.]

[Prepared statement, biographical sketch of nominee, and additional material supplied for record follow:]

PREPARED STATEMENT OF SENATOR WAYNE ALLARD

I would like to thank Chairman Shelby for convening today's hearing. I appreciate that, as always, he remains dedicated to moving nominees forward promptly.

I am pleased to welcome Ronald Rosenfeld back to the Banking Committee. Mr. Rosenfeld has spent the last 3 years as the President of Ginnie Mae, where he has performed admirably. As Chairman of the Housing Subcommittee, I have had many opportunities to hear about the good work he has done in that capacity. He has an extensive background in housing and finance, and it is to our benefit that he has agreed to continue his service to America as Director of the Federal Housing Finance Board.

Mr. Rosenfeld, you will be taking on a significant challenge at the Federal Housing Finance Board. The last decade has been a time of tremendous change at the Federal Home Loan Banks: The changes enacted in Gramm-Leach-Bliley, industry consolidation, and now regulatory reform have shifted the challenges before the Finance Board.

In light of these changes, though, I want to mention one consistent theme: Safety and soundness. No matter what particular issue the Board or any subsequent regulatory entity may consider, it must be done through the lens of safety and soundness.

The Federal Home Loan Banks are an important source of liquidity for many financial institutions, particularly small, independent, community banks, such as those in Colorado. To neglect or ignore safety and soundness at the Federal Home Loan Banks could be detrimental to a number of entities.

America is fortunate to have a record high homeownership rate. I look forward to working with you to find ways that the Federal Home Loan Banks can continue to help create new homeowner families in a safe, sound manner.

Again, welcome, and I look forward to your testimony.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Rosenfeld Ronald Allan
(Last) (First) (Other)
 Position to which (Designated Chairman) Date of
 nominated: Member-Federal Housing Finance Board nomination: _____
 Date of birth: 23 April 1939 Place of birth: Cleveland, Ohio
(Day) (Month) (Year)
 Marital Status: Married Full name of spouse: Joan Patricia Rosenfeld
 Name and ages
 of children: Philip Rosenfeld 40
Laura Barnes 38
David Rosenfeld 35

Education:	Institution	Dates attended	Degrees received	Dates of degrees
	Wharton School			
	Univ. of Pennsylvania	9/57 - 6/61	B.S. Economics	6/61
	Harvard Law School	9/61 - 6/64	J.D.	6/64

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Beta Gamma Sigma (Honorary Society)
1992 Joseph Wharton Award - Presented by the Wharton Alumni
Club of Washington, DC
Distinguished Service Award - Presented by the Wharton
Alumni Association - May 14, 1994
Adjunct Professor of Management - The College of Business
Administration of Oklahoma State University

Memberships:

List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
Wharton School Board of Overseers		1989 - Present

Employment record:

List below all positions held since college, including the title or description of job, name of employment, location of work, and dates of inclusive employment.

1965-67	Willow Shore Builders, Inc. - Vice Pres. Land Development and home building	Cleveland, OH
1968-75	Multiplex, Inc. - President Developers and managers of apartments and condominiums	Cleveland, OH
1976-81	Zappala & Co./FRA Associates - Partner Investment banking and shopping center development	Pittsburgh, PA
1982-88	Prescott, Ball & Turben - Exec. Vice Pres. Investment banking	Cleveland, OH
1989-91	Dept. of Housing and Urban Development Deputy Assistant Secretary - Single Family Housing Acting Assistant Secretary - Multifamily Housing (Deputy) Deputy Federal Housing Commissioner	Washington, DC
1992	Department of the Treasury Deputy Assistant Secretary for Corporate Finance	Washington, DC
1993	NHP - Exec. Vice President Apartment owners and managers	Washington, DC
1995-98	State of Oklahoma Secretary of Commerce	Oklahoma City, OK
2001-04	Dept. of Housing and Urban Development President - Government National Mortgage Association (Ginnie Mae)	Washington, DC

Government
experience:

List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part time service or positions.

~~Department of Housing and Urban Development~~
~~Deputy Ass't Secretary for Single Family Housing~~
~~Acting Deputy Ass't Secretary for Multifamily Housing~~
~~Deputy Federal Housing Commissioner~~
~~President of Ginnie Mae~~
~~Department of the Treasury~~
~~Deputy Ass't Secretary for Corporate Finance~~
~~State of Oklahoma~~
~~Secretary of Commerce~~
~~Chairman - Governor's Commission on Government Performance~~

Published
Writings:

List the titles, publishers and dates of books, articles, reports or other published materials you have written.

None

Political
Affiliations
and activities:

List memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Member of Republican Party

~~I have never held an office in a political party nor~~
~~have I rendered service to an election committee.~~

Political

Contributions:

Itemize all political contributions of \$500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify specific amounts, dates, and names of recipients.

See Exhibit "A" attached hereto

Qualifications:

State fully your qualifications to serve in the position to which you have been named.
(attach sheet)

See Exhibit "B" attached hereto

Future employment
relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.
Prior to my recess appointment I have severed all relations with any entity that may have been deemed a potential conflict.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

No

3. Has anybody made you a commitment to a job after you leave government?

No

4. Do you expect to serve the full term for which you have been appointed?

Yes

Potential conflicts
of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated .

None

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

The Government Office of Ethics and the General Counsel at the Federal Housing Finance Board have reviewed all matters referenced in this question and we have entered into an Agreement, a copy of which is attached hereto as Exhibit "C".

3. Describe any business relationship, dealing or financial transaction (other than tax paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None

4. List any lobbying activity during the past ten years in which you have engaged in for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

None

5. Explain how you will resolve any conflict of interest that may be disclosed by your responses to the items above.

N/A

Civil, criminal and
investigatory
actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

I do not recall being a defendant in any civil or criminal proceeding (except for my divorce in 1976).

The only investigation of which I am aware is a security and background check relating to this potential Federal Government service and previous such service.

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

None

Exhibit "A"

	<u>Contribution</u>	<u>Donee</u>
<u>1997</u>		
3/6	\$ 5,000	Keating for Governor
3/7	2,000	Friends of Senator Nickles
7/1	2,000	Lazio for Congress
<u>1998</u>		
2/19	1,000	Simonson for Mayor
2/19	1,000	Reneau for Labor Commissioner
2/19	1,000	Fallin for Lt. Governor
7/1	2,000	Williams for Mayor
7/15	2,000	Wes Watkins for Congress
9/3	2,500	Oklahoma State Republican Party
9/16	500	Oklahomans for Denise Bode
9/17	2,500	G O P House PAC
<u>1999</u>		
1/25	2,500	Zappala for District Attorney
2/10	2,000	Republican Governors Association
8/5	1,000	Istook for Congress
8/25	1,000	George W. Bush for President
11/23	1,000	English for State Representative
<u>2000</u>		
4/5	500	Friends of JC Watts
6/3	500	Jarvis 2000
7/5	20,000	RNC Presidential Trust (From Patti Rosenfeld)
7/5	20,000	RNC Presidential Trust
7/5	60,000	R N S E C
9/28	1,000	Lazio for Congress
<u>2001</u>		
5/7	1,000	Cathy Keating for Congress
5/24	1,000	Cathy Keating for Congress
9/5	1,000	Largent for Governor
12/22	500	Oklahomans for Denise Bode
<u>2002</u>		
1/7	5,000	Florida Victory 2002
7/8	2,000	Cole for Congress
9/28	500	Oklahoman for Denise Bode
10/8	1,000	Cole Victory 2002
10/23	1,000	Ehrlich for Governor
<u>2003</u>		
10/6	4,000	Cole for Congress

Exhibit "A" Con't.

2004

1/23	2,000	Martinez for Senate
3/21	500	Lamb for State Senate
6/9	2,000	Bush-Cheney (From Patti Rosenfeld)
6/9	2,000	Bush-Cheney
7/15	5,000	Cole PAC
9/23	2,000	Martinez for Senate

Exhibit "B"

After an education with emphasis on economics and law I began a career that involved banking and credit which is the domain of the Federal Housing Finance Board. As a developer of residential real estate one quickly learns the importance of credit and its availability. Mortgage credit is the lifeblood of that industry and without it the industry suffers and the opportunity for home ownership diminishes.

Serving at HUD and Treasury in the late 80's and early 90's during the period known as the "savings and loan crisis" it is not difficult to appreciate the importance of the Federal Housing Finance Board in assuring the safety and soundness of the financial institutions for which it is responsible.

As Secretary of Commerce in Oklahoma I was exposed to the challenges faced by quasi-urban and rural communities particularly with their local financial institutions. At Ginnie Mae I learned to appreciate the genius of the American mortgage finance system which provides unparalleled access to mortgage credit by the concept of securitization of mortgages.

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Al Mansell, CRB
President
Terrence M. McDermott
EVP/CEO
GOVERNMENT AFFAIRS
Jerry Giovannello, Senior Vice President
Walter J. Witek, Jr., Vice President

February 28, 2005

The Honorable Paul S. Sarbanes
United States Senate
534 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Sarbanes:

On behalf of the National Association of REALTORS® I want to support the nomination of Ronald A. Rosenfeld, of Oklahoma, to be a Director of the Federal Housing Finance Board. His confirmation and continued leadership at the Federal Housing Finance Board will contribute to enhancing the safety and soundness of the nation's housing finance system.

Mr. Rosenfeld has had an extensive private sector career in housing finance and as a developer of residential housing and commercial real estate. His public service career in housing and housing finance has contributed to the nation's public policy of enhancing housing opportunities and the availability of financing for housing.

The National Association of REALTORS® looks forward to working with Mr. Rosenfeld and the Federal Housing Finance Board.

Sincerely,



Al Mansell, President

Cc: The Senate Banking Committee Members

**NOMINATION OF:
EMIL HENRY, OF NEW YORK,
TO BE ASSISTANT SECRETARY,
FINANCIAL INSTITUTIONS AND
PATRICK O'BRIEN, OF UTAH,
TO BE ASSISTANT SECRETARY,
TERRORIST FINANCING
U.S. DEPARTMENT OF THE TREASURY**

TUESDAY, SEPTEMBER 20, 2005

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met at 10:06 a.m., in room SD-538, Dirksen Senate Office Building, Senator Richard C. Shelby (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN RICHARD C. SHELBY

Chairman SHELBY. The hearing will come to order. This morning, we will consider nominees for two very important positions at the Department of the Treasury: Mr. Patrick O'Brien for the position of Assistant Secretary of the Treasury for Terrorist Financing and Mr. Emil Henry, Jr., for the position of Assistant Secretary of the Treasury for Financial Institutions.

Mr. O'Brien, you have been nominated by the President to be Assistant Secretary for Terrorist Financing at an absolutely critical period. As the events of September 11 recede from immediate memory, your job will be to help provide the leadership and clear guidance necessary to maintain and continue the efforts to ensure that this Nation's financial system will not be exploited by those who would do us harm.

It will largely be your responsibility to bring Treasury's vast but not limitless resources to bear on the tasks involved in finding, following, fracturing, and sometimes freezing the money supply lines used to support terror. Your considerable experience at the Department of Justice should serve you well in meeting the challenges that are before you.

Mr. Henry, the Assistant Secretary for Financial Institutions, your position, must also handle very significant issues. Our financial markets are the envy of the world. They are also highly complex and dynamic. The regulation and oversight of the markets must ensure fairness, transparency, and certainty while at the

same time remaining flexible enough to allow for innovation and growth. This involves establishing a balance where both safe and sound operations and profitability are possible. Achieving and maintaining this balance is not easy. It requires considerable thought and constant attention.

Mr. Henry, as someone who has spent the better part of 20 years in the private sector, I am sure you recognize the importance of this balance and it would be my hope that through your tenure in public service, you would remain constantly mindful of it.

I am looking forward to hear from our nominees, but first, we have some important people here with us, Senator Hatch, my colleague and friend, will introduce, I believe, Mr. Pat O'Brien.

Senator Hatch, do you want to proceed?

**STATEMENT OF ORRIN G. HATCH
A U.S. SENATOR FROM THE STATE OF UTAH**

Senator HATCH. Thank you, Mr. Chairman. This is a rare privilege to appear before the Banking Committee and especially before you.

Chairman SHELBY. Thank you.

Senator HATCH. But it is my pleasure this morning to introduce to you Patrick O'Brien, the President's nominee to be Assistant Secretary of the Treasury for Terrorist Financing. I think they should change that title a little bit, Secretary for Terrorist Financing. That is interesting.

[Laughter.]

I strongly support his nomination and urge you to vote favorably so that he may be confirmed as quickly as possible.

Pat is here this morning with his parents Jack and Terry and his lovely family, his wife, Maureen, and their daughters, Molly and Margaret. Pat is a graduate of the University of Notre Dame and the University of Minnesota Law School. He has had a variety of professional experience as a Federal law clerk and in private practice, as an officer in the U.S. Army Reserve and as a prosecutor and of course has had an experience with us. I first met Pat in 1999, when I invited him to join the staff of the Senate Judiciary Committee.

During his time with the Committee, he worked on a variety of important oversight and law enforcement issues. He proved himself to be smart, intelligent, a capable lawyer, with sound judgment and an ability to work well with others.

Pat left the Committee in July 2001 to join the Department of Justice, where he has held a number of significant positions over the last several years. He was the principal Deputy Assistant Attorney General for Legislative Affairs during the tumultuous times following September 11, 2001. He later served at the FBI as Counsel to FBI Director Mueller, where he worked on a number of important national security issues, including the initial standup of the Terrorist Threat and Integration Center and as the primary contact for the FBI with the September 11 Commission.

In September 2004, Pat returned to Main Justice as Senior Counsel to the Deputy Attorney General. Since then and to the present day, Pat has worked daily on counterterrorism issues for the Justice Department. Among other things, he represents the

Justice Department on the Interagency Terrorist Financing Policy Coordinating Committee, the PCC, chaired by the National Security Council. The PCC is the policy body dedicated to targeting and disrupting terrorist financing networks and building international coalitions to cut off financial flows to terrorists.

Now, this background, coupled with his strong character, his integrity and leadership skills make him very well-suited to be successful as the future Assistant Secretary for Terrorist Financing. I know Pat really well. I was proud to have him work with us. He did a great job on the Judiciary Committee. You could rely on him. He is somebody that I have total faith in of his integrity and honesty, and I think we are lucky to have him in this particular position, and I urge the Committee to support his nomination, and I know, Mr. Chairman, you will do everything you can to see that he is approved as soon as possible.

Chairman SHELBY. I will. That was a good introduction. Thank you, Senator Hatch.

Senator HATCH. Thank you so much.

Chairman SHELBY. Congresswoman Kelly, you are here to introduce, I understand, Mr. Henry.

**STATEMENT OF SUE W. KELLY
A U.S. REPRESENTATIVE IN CONGRESS
FROM THE STATE OF NEW YORK**

Mrs. KELLY. I am.

Thank you, Chairman Shelby. I appreciate your inviting me to testify on behalf of my good friend, Emil Henry, in his nomination for Assistant Secretary of the Treasury for Financial Institutions. I have known Emil for a number of years, and I can testify to his character, common sense, and commitment to our community.

Emil is a cum laude graduate of Yale University. He received an MBA from Harvard Business School. He has had a spectacular career in finance, pioneering new developments in the venture capital and business development areas and is very well respected by his peers.

As a member of the Small Business and Financial Services Committees in the House, I can honestly say that the ideas pioneered by Emil Henry have created thousands of jobs in this country. Emil shares a commitment to eradicating lyme disease in our area, which is a very large problem. Senator Dodd, who is a Member of this Committee, knows very well what I am talking about.

Emil has raised a number of funds. He has made the community aware. He has done a great deal of effort in terms of making our community and quality of life good. His credentials in terms of financial services are impeccable. His credentials in terms of community service are equally impeccable. Emil is a family man, he has been devoted to his wife since they first met in their freshman year in college. I urge this Committee to act swiftly in favor of his confirmation to allow him to begin to put his mind and his character into a new career of public service for our Nation.

Thank you very much, and I know you will consider him carefully and well. I hope you will consider him very favorably.

Chairman SHELBY. Thank you, Congresswoman.

Mrs. KELLY. Thank you.

Chairman SHELBY. If Mr. Henry and Mr. O'Brien will stand, raise your right hands and be sworn.

[Witnesses sworn.]

Chairman SHELBY. Thank you. Your written testimony, both of you, will be made part of the record in its entirety. Which one of you wants to go first? Just sum up.

Mr. O'BRIEN. At your pleasure.

Chairman SHELBY. Okay. Mr. Henry, go ahead.

**STATEMENT OF EMIL HENRY, OF NEW YORK
ASSISTANT SECRETARY FOR FINANCIAL INSTITUTIONS
U.S. DEPARTMENT OF THE TREASURY**

Mr. HENRY. Thank you.

Thank you, Chairman Shelby, Ranking Member Sarbanes, Members of the Committee. Thank you for the opportunity and the privilege to appear before you today to discuss my nomination to become the Assistant Secretary of the Treasury for Financial Institutions. And before my formal statement and with your indulgence, if I could introduce the members of my family that are here today.

Chairman SHELBY. That would be ideal. We would like that, both of you.

Mr. HENRY. And behind me in the second row, my wife Jody. She and I graduated from Yale together. She is my best friend, and she is a full-time mother. And next to her is my father. My father was the Chairman of the Federal Communications Commission under Presidents Kennedy and Johnson; and then, my daughter, Madeleine, who is 13; my mother, Sherry Henry. She was a President Clinton appointee at the SBA running the women's office and has long been an advocate for women's issues; and my daughter Parker, who is 12. I have another son, who is Parker's twin brother, and he is pursuing his dream at a tennis academy in Florida today. He wished he could be here, but he could not.

Chairman SHELBY. Okay.

Mr. HENRY. I would like to begin by expressing my thanks to President Bush for nominating me for this important position. I am truly honored to have his confidence and, if confirmed, I will focus daily upon earning and re-earning the trust he has placed in me. I would also like to thank Secretary Snow, Under Secretary Randal Quarles, and the other fine individuals the President has nominated to the Treasury for their support. If confirmed, I look forward to working with them on the many important issues currently before the Treasury, and many more to come.

My thanks also to my friend and Congresswoman Sue Kelly for taking the time to come here today, and for her very thoughtful and kind introduction. Representative Kelly and I share a beautiful hometown, Katonah, New York. Her constituents, including myself, hold her in very high esteem for her attention to her district and for her measured wisdom on the House Financial Services Oversight and Investigation Subcommittee and for her leadership on terrorist financing issues.

Last, I would like to thank my parents behind me for inspiring me to enter public service. From the time I could recognize my own name, I have believed that public service was not only a high calling but also a natural part of one's productive life.

I come before you today in the longstanding tradition of one who has spent his entire career in the private sector before being called to service. As my resume shows, I have no formal public service experience. Yet, I do have over 20 years' experience on Wall Street and in the financial community, and much of my time has been spent at a senior level in some of the more sophisticated and complex sectors of the capital markets.

All of the firms I have been associated with have the highest regard of their peers and of the financial community. At First Boston, my first job after graduating from Yale, I was fortunate to be picked to work in the Capital Markets Division, which, at the time, was at the forefront of the advent of early derivatives, such as interest rate swaps, options, and futures. And then, at Morgan Stanley, I was a member of a team charged with building a preeminent principal investment business, a business involving management buyouts, equity and debt financings, mergers, and acquisitions and bank financings. For the past 15 years, I have been at Gleacher Partners, where I am now Managing Director and also Chairman of our core investment business and a member of our Investment Committee. Our businesses invest in a sophisticated array of alternative investments, including private mezzanine debt, private equity, and hedge funds, where our investments are exposed to most of the products and services offered in today's capital markets.

I believe my experience has given me a broad and deep understanding of the activities of the financial institutions that participate in today's increasingly complex and very fast moving capital markets. As founder and chairman of an investment business, I appreciate the essential importance of safety and soundness in our markets and institutions. I understand the value of disclosure and transparency, and I am sensitive to the importance of balancing the costs and the benefits of regulation.

If confirmed, I believe my role as Assistant Secretary would benefit from my extensive experience and I would hope to complement the extraordinary reservoir of talent at the Treasury, and, in my judgment, the most effective organizations are those populated by individuals whose skills and experience truly do complement each other.

I would also look forward to working closely with the Members of this Committee and the House Financial Services Committee on crucial issues such as GSE reform and terrorism risk insurance. I will also devote myself to the oversight of the critical infrastructure of our Nation's financial institutions. The recent disaster in the Gulf States highlights the vital need to be prepared for natural or man-made disasters, and if confirmed, I expect to spend a significant amount of my time focusing on the preparedness of the U.S. financial system.

Thank you again for the honor and the privilege to appear before you today, and I would certainly be pleased to answer any questions you may have.

Chairman SHELBY. Mr. O'Brien, do you have some people you would like to introduce?

**STATEMENT OF PATRICK M. O'BRIEN, OF UTAH,
TO BE ASSISTANT SECRETARY FOR TERRORIST FINANCING
U.S. DEPARTMENT OF THE TREASURY**

Mr. O'BRIEN. Yes, I do. Good morning. With your permission, I would like to introduce, in the second row, first of all, my mother and father, Jack and Terri O'Brien from Minneapolis, Minnesota; my wonderful wife, Maureen, and our two daughters, whom you have probably heard a little bit from already, Molly, who will be 2 in December, and Margaret, who just turned 4 months old. I am extremely blessed to have such a wonderful family, and I will never be able to repay them for the love and support they have provided me, for the example of my parents and for the support of my wife. No one can undertake a challenge like this without a great support system, and I certainly have that.

Thank you again for holding this hearing this morning. I know how busy the Committee is, and I appreciate the opportunity to meet with you this morning and answer any questions you may have. I am humbled to sit here before you this morning as the President's nominee to be the Assistant Secretary of the Treasury for Terrorist Financing. I would like to thank the President for nominating me and for the support of Secretary Snow and Under Secretary Levey. I also greatly appreciate Senator Hatch for his support and for his introduction here this morning.

It is a great honor to be asked to serve our country. It is also a great responsibility and one that I take very seriously. Should the Senate confirm me, I will give my absolute best to be an effective Assistant Secretary and to help the Treasury Department, our colleagues across the Government, as well as our international partners, target and disrupt illicit financial networks, to build effective systems to prevent the abuse of financial institutions, and to isolate and punish those who threaten our national security.

I will bring to this position a variety of professional experiences that, I believe, will enable me to be an effective addition to the Department of the Treasury. I am fortunate to be nominated to join a very strong team. If I am confirmed, I am committed to further developing and strengthening the Office of Terrorism and Financial Intelligence or TFI. As the Committee is aware, the concept behind TFI and one I strongly support is to marshal Treasury's unique authorities, financial intelligence, analysis, and international relationships to attack the financial underpinnings of national security threats. If confirmed, I will dedicate myself to developing the Treasury's ability to play the strategic role by providing policy development and coordination to support TFI initiatives, and building partnerships and coalitions to expand the implementation of sound financial practices and the impact of targeted financial sanctions internationally.

To develop effective policy requires that we continue to grow our expertise across industries and financial disciplines, as well as regionally across the world, to expand policies that address the wide variety of financial means that can be utilized by illicit financial networks.

Partnerships must be fostered and maintained both domestically and internationally. I am committed to building the strongest possible cooperating relationships with our colleagues across the U.S.

Government. These threats cannot be addressed by one agency alone. If confirmed, I will build on the strong relationships that currently exist between Treasury and its partners at Justice, FBI, State, Defense, DHS, CIA, and the rest of the intelligence community. Our goal must be to think and act as a single government to achieve a shared set of goals.

It is also essential that we internationalize the impact of sound financial systems and targeted financial sanctions. This requires strong bilateral and multilateral relationships. If confirmed, I will continue Treasury's efforts in conjunction with the State Department and other Federal agencies, to promote accepted international standards for sound financial practices and to increase partner capacity and cooperation through organizations like the United Nations, the Financial Action Task Force, FATF, and the Egmont Group. The activities of illicit financial networks do not stop at our borders, and thus we must proactively seek to internationalize our efforts.

Thank you again for holding this hearing, and I would be pleased to answer any questions you have.

Chairman SHELBY. Thank you, Mr. O'Brien.

I will pose the first question to you just for the record. Under Secretary Stuart Levey recently said, "Saudi donors may still be a significant source of terrorist financing, including for the insurgency in Iraq." There are also credible reports of open fundraising for the insurgency being conducted in Western Europe. More troubling still are the thoughts of the U.S. CENTCOM General Abizaid, who has publicly stated that money for the insurgency has likely come from our very own country.

One, it is no secret that there are weaknesses in the financial defenses of Saudi Arabia. We know that, and you do, too, but what are the state of those in Europe and more importantly here in the United States? Two, if this money is making its way from all of these shores to the inside of Iraq, does it follow that plenty of money may be reaching other groups in other places as well? And three, as one of the officials, Mr. O'Brien, in the chain of command, then, for ensuring oversight of the Nation's banks for compliance with the Bank Secrecy Act and USA PATRIOT Act, in your view, how important are these laws to our overall strategy of combating money laundering and terror financing?

Mr. O'BRIEN. Thank you for that question, Senator.

I think the Congress gave us some incredible tools when it passed the USA PATRIOT Act, and I think the expansion of the Bank Secrecy Act, the new authorities it gave us under Section 311 as well as the information sharing provisions of the USA PATRIOT Act provide not only Treasury but also the U.S. Government with very significant tools to fight the threats that you described.

Certainly, I think there is continued vibrance in the utility of the information that we get under the Bank Secrecy Act. We are continually striving to do better analysis and make better use of that information. As you mentioned, the threats that exist within the network of illicit financial networks are international. There are vulnerabilities in really every country in the world. We see potential financing can really come from anywhere, and the means by which they can affect this support are vast.

I think that underscores the need to internationalize our efforts and make sure that, certainly, the requirements through the United Nations and others to designate and be able to freeze and isolate terrorist funds across the world, our partners need to have the capacity to do that, and I think we have to work very diligently with our partners in Europe as well in Saudi Arabia, the Gulf states, and elsewhere to make sure that is a reality.

Chairman SHELBY. I want to go into a different area, Mr. Henry.

This Committee, the Banking Committee, reported out a bill to reform the regulatory system for the housing-related GSE's, that is, Fannie, Freddie, and the Federal Home Loan Banks. One point of contention in that bill is the new regulator's ability to review the GSEs' asset portfolios. Do you believe such authority for the new regulator is a critical component for a reform bill? Have you put any thought in this?

Mr. HENRY. Thank you for that question. First of all, let me say that I am very much aware of the continuing dialogue and the important continuing dialogue of GSE reform, and I have followed this very closely from the private sector.

Chairman SHELBY. Are you concerned about the systemic risk that Alan Greenspan keeps talking about?

Mr. HENRY. I think this is an essential element of reform, and when I think about the reform bill, I think certainly, the size of the retained portfolios of Fannie and Freddie are a point of concern and something for us to focus on and other key elements such as supporting the resiliency of the housing market and making absolutely sure that good and affordable credit is available to every consumer. I think those are the important elements of reform.

Chairman SHELBY. Given your financial market experience, you have spent your life here, do you believe that the capital markets could absorb the flow of mortgage-backed securities should Fannie and Freddie not be able to hold them in their portfolio other than what they need to work with, to the extent that they do now?

Mr. HENRY. My instinct is yes, and again, not having studied this in great depth at the Treasury—

Chairman SHELBY. Sure.

Mr. HENRY. —and I very much look forward to that, but I would point out that the market for credit is somewhere between \$7 trillion and \$8 trillion, and the retained portfolios combined of Fannie and Freddie approximate \$1.4 trillion. So my instinct is that there is plenty of capacity in the private market to absorb those kinds of credits.

Chairman SHELBY. Mr. Henry, bank capital requirements are one of the important means used to protect the financial integrity of the banking sector. Currently, our banking regulators are working toward finalizing a new capital accord for the largest, most sophisticated banks. The Basel II plan, as it is known, will involve a significant departure from the current capital rules, Basel I that we are doing.

What role do you see for the Department of the Treasury to see that the plan is thoroughly vetted and properly implemented? Because it has been more than a subject of debate among our regulators among others.

Mr. HENRY. Yes, I have watched from a distance the very important and crucial discussions of Basel II. I think historically, the Treasury has acted as an interested observer in this process, and the Treasury should be a very interested observer in this process.

The importance of capital standards cannot be overstated. The markets, from my position in the private sector, the banks in the last 10 to 20 years have increased in size and complexity, and so, I think there is increasing need to stay focused on proper capital standards in the context of larger and more complex balance sheets.

Chairman SHELBY. Solvency, in other words.

Mr. HENRY. Yes, solvency. And right back to safety and soundness, which is at the core of the mission of the regulators for these industries.

So, I will watch this closely, I do promise you that, and I will watch for unintended consequences, and I will watch to make sure our banks can remain competitive and that there is proper views given to all ratios that have historically been discussed in Basel. I would like to understand how they are going to come out on that, the leverage ratio, risk-based capital standards, et cetera, but I can assure you I will be attuned and focused to that.

Chairman SHELBY. You will be deeply involved in it.

Mr. HENRY. Yes, sir.

Chairman SHELBY. I want to turn now to terrorist risk insurance, TRIA.

In the near future, the Committee here will take up legislation that addresses the Terrorism Risk Insurance Program, which we call TRIA. I am very concerned that we must strike the right balance between public and private responsibilities as we move forward; that is to say the program, I believe, must address unmet needs without creating disincentives for the market in areas where the private sector can play a role.

The Treasury report issued earlier this year, and I understand you have not been there, has been a guide for our consideration of this law. What are the elements you believe, if you have looked at all, should we remain focused on as we continue our work in this area?

Mr. HENRY. I am glad you asked that, and as I said in my opening statement, I understand that TRIA will be an important part of my portfolio, and I am ready to go at that. TRIA was a crucial piece of legislation in the wake of September 11. I come from New York. We felt that very closely, and at issue there, certainly, was the economic dislocation and the ability for developers and others to create financing in the absence of insurance for terrorism risk.

So a crucial piece of legislation. I actually, in preparation for this hearing, read a summary of the Treasury report. I noted some interesting elements of that report. I noted one, that there has been increased availability of insurance. I noticed that there has been increased take-up of insurance. I noticed that there was not a causality, as determined, pointed out in that report by—

Chairman SHELBY. Do you think the market is beginning to respond to a need there?

Mr. HENRY. Yes, and I would say yes, and I would note that responding to a need in the context of increasing deductibles, insur-

ance company deductibles through the period that TRIA has been in existence, I would also point out that the Treasury report did, it did raise some uncertainties: How will rating agencies react if there were no TRIA? I do not know the answer to that but certainly worth understanding, and other uncertainties were raised in that report. So, I will certainly stay engaged in this discussion, and I understand it is an important one.

Chairman SHELBY. Thank you.

Mr. O'Brien, I want to get back to you. If confirmed, and you will be, both of you, I pray you will be soon, when can this Committee anticipate seeing the final regulation on correspondent banks pursuant to Section 312 of the USA PATRIOT Act? This Committee was promised this regulation many times in the past only to see it languish somewhere in the bureaucracy.

This is an important regulation to finalize, because there are a number of financial institutions that are exempt from coverage at this time: Casinos, MSB's, investment, and insurance companies just to name a few. Have you focused on that? I know you will be but——

Mr. O'BRIEN. I certainly will be focused on that should I be confirmed, and I understand the Committee's frustration in that regard. It has certainly been too long for that regulation to come out, and I will certainly do everything I can to speed that process along.

Chairman SHELBY. Mr. O'Brien, currency transaction reporting, I know we are dealing in complicated things, but this is your job and will be your portfolio.

As an official at the Department of Justice and as a former Counsel to the Director of the FBI, you are familiar with the currency transaction reports and the stories coming from the financial industry in the press and elsewhere that these filings may be, "clogging the works." Today, CTR's are filed at the \$10,000 level, and there are also exemptions pertaining to when they are not filed.

As legislators up here, Senator Sarbanes and I and our colleagues, we acknowledge that national security is foremost in our minds when confronting the money laundering and terrorist financing problems of today. But we also try to find workable solutions when imposing burdens on private enterprise to meet those national security concerns, a balance there.

In light of your experience at Justice, which is vast, do you find these reports relevant and useful to the investigations of financial crimes, particularly those pertaining to money laundering and the financing of terror?

Mr. O'BRIEN. Yes, I do, Senator. And I think there is ample public testimony from the FBI and others that demonstrate the utility of these reports.

These types of financial reports are also a very important source of intelligence. Financial intelligence is somewhat unique in that it is something that can be verified, and I think it is an important element in our overall analytic picture. I certainly understand the concerns that can be raised through the banking community about the burden of regulation.

I think the U.S. Government needs to do a better job of explaining why this is important and how we use these things, because

I think most financial institutions are good citizens, and I think if they understand the utility of these things, I think they want to be cooperative. And certainly, there are mechanisms like the Bank Secrecy Act Advisory Committee that provide a forum for us to have these discussions with the community, and I think it is important to always try to strike that right balance.

Chairman SHELBY. Do the current exemptions allow sufficient latitude on the part of banks and other financial institutions interested in decreasing the number of CTR's they are otherwise required to file?

Mr. O'BRIEN. In my current position, I have not had extensive interaction with the private sector community to hear their concerns directly. I think that is something that I would, if confirmed, want to reach out and hear from them directly and understand their concerns before I formulate an opinion as to whether the exemptions were appropriate.

Chairman SHELBY. How would you deal with overcompliance? You know, banks, they are nervous, I would be, for failure to comply, and a lot of them are overcomplying. And it creates a big paper nightmare sometimes.

Mr. O'BRIEN. Yes, and I understand that there is also a concern about, you know, potential criminal liability and so forth, and I know the Treasury Department, in conjunction with the Justice Department, has kind of worked on that issue, and Under Secretary Levey has had some discussions, and I think we have some updated guidance for enhanced approvals at the Department of Justice for such prosecutions that hopefully alleviate some unnecessary concern.

But defensive filing is a significant issue that we will have to continue to work on.

Chairman SHELBY. When your predecessor was here for his confirmation hearing, he noted that the main concern with CTR filing was that it became rote to file the CTR, an attitude that has led to increasing numbers filed. I alluded to that a moment ago, without taking full advantage of the exceptions to the rule.

He emphasized that one of his primary duties, in fact, his number one assignment, was to get the financial industry to understand the existing lawful exceptions to filing CTR's that now are not being taken advantage of. Is this mainly a problem of information, of education, or is it the fact they are nervous about maybe not doing enough? Does more work need to be done in this area?

Mr. O'BRIEN. Certainly, there is a large education component to it, and I think before changes are made to regulations and so forth, we should really examine closely whether current exemptions are sufficient.

Chairman SHELBY. Mr. Henry, I have one last question for you at the moment. Federal deposit insurance is another measure that has a proven history for protecting the financial stability of the banking system, confidence in the banking system. I am currently working, we are with many of our colleagues here, on legislation to provide greater flexibility, risk sensitivity, and ensure that all beneficiaries are required to pay for what they receive. Do you believe this is the appropriate focus to achieve positive reforms? You know, we are working with the Treasury and the White House.

Mr. HENRY. I know, and I have followed these discussions, yes, indeed, and if confirmed, I understand this would be on my plate. Chairman SHELBY. It would.

Mr. HENRY. I understand the value of—

Chairman SHELBY. You will be coming up here a lot.

Mr. HENRY. I would welcome it.

Chairman SHELBY. Okay.

Mr. HENRY. I understand most certainly the importance of the safety net provided by the insurance system, and it is vital, and it has served this country well for a very long time indeed.

There are many elements to reform. I listened closely to your question, and I think you hit on the key elements of reform, in my humble opinion. The FDIC is an insurance entity, and to allow the FDIC to act like an insurance entity, to have flexibility around its reserves for premiums to reflect the underlying risk of organizations that are paying into the system that organizations pay into the system perhaps that have not historically; I would like to understand that a little bit better, but most certainly, I think those are within essential elements of reform here.

Chairman SHELBY. Senator Sarbanes, thank you very much for your indulgence.

STATEMENT OF SENATOR PAUL S. SARBANES

Senator SARBANES. Surely.

Mr. Chairman, I am not going to be able to stay long, because I have a conflicting engagement. But first of all, I want to welcome the two nominees. I want to note that the two assistant secretaryships that we are considering this morning play a very important role in ensuring our Nation's preparedness against acts of terrorism and even natural disasters as they may affect our financial infrastructure.

In fact, most people know that the Assistant Secretary for Financial Institutions has the responsibility for developing, analyzing, and coordinating the Department's policy on legislative and regulatory issues affecting financial institutions. That is quite a wide jurisdiction, obviously, and is also responsible for policy developments for financial privacy and consumer protection and for the safety and efficiency of our financial systems and our capital markets.

So it is quite a big charge, but it is not as well-known that the Assistant Secretary for Financial Institutions also oversees the Office of Critical Infrastructure Protection and Compliance, which coordinates the Treasury Department's development and implementation of policies regarding the protection of the critical infrastructure of the financial services sector, which is something we obviously in recent times have had to give increasing attention to.

We understand from your predecessor in that office that he spent about a third of his time working on that dimension of his responsibilities, even though it is not as highly visible a charge. And I want to ask you about that in a moment.

Of course, the Assistant Secretary for Terrorist Financing is one of three senior officials in the Treasury's Office of Terrorism and Financial Intelligence which is responsible for administering the Nation's economic sanctions and anti-money laundering programs.

Now, the Chairman has had a very keen interest in this as did I previously, and there have been a series of hearings over the last 4 years in this Committee. I commend those hearings to you if you have not had a chance to look at them on the importance of financial information in dealing with the threat of terrorism and proliferation of weapons of mass destruction.

The movement through the financial system of the proceeds of white collar corruption and fraud is an equally serious problem for the Treasury. The President said last week Katrina exposed serious problems in our response capability at all levels of government. The focus, of course, is primarily the Department of Homeland Security, obviously. But both of you have important responsibilities with respect to our response capability in the financial services sector, and of course, if the financial services sector cannot work, it is very difficult to get the economy to work almost by definition.

So Mr. Chairman, I want to thank you for moving as quickly as you have on the hearing for these nominees.

Chairman SHELBY. Thank you.

Senator SARBANES. I think it is important that we get those positions filled, and I look forward to working with you to accomplish that objective.

Chairman SHELBY. Thank you.

Senator SARBANES. Mr. Henry, let me ask you: Do you have any plans for ensuring there will be no serious problem within our Nation's critical financial service infrastructure in times of emergency? How large does that challenge loom as you consider the responsibilities of this position?

Mr. HENRY. Thank you for that question, and I think the events of Hurricane Katrina certainly put a spotlight on the importance of preparedness across many institutions, including financial institutions.

I have also learned of the importance of the Office of Critical Infrastructure Protection, of the amount of time that if I were fortunate enough to be confirmed that I will be spending upon those issues. And I will offer the following observations. One is that I will be completely committed to that. Second, I recognize that in that office, there are a number of what appear to me at this point to be very valuable tools and resources to assist the assistant secretary in our preparedness. These run from public sector committees such as the Financial and Banking Infrastructure and Information Committee, which I understand was heavily engaged before and after Katrina, and this is an important resource for understanding vulnerabilities, understanding risks, and understanding business continuity plans, disaster recovery, how to approach the importance of easing, if required, certain regulations in the wake of a disaster and focusing on such important issues, especially in Katrina, as understanding when a community may go to a cash economy and what is important to deliver in circumstances like that.

So, I understand the resources that are available. I welcome the challenge, and I recognize its crucial importance in our financial institutions and financial services businesses.

Senator SARBANES. I want to follow-up on the Chairman's question with respect to Basel II, which you said you had followed close-

ly, but I think there is a considerable concern in the Congress that it is moving very much in the direction of lowering capital standards. In fact, there are some studies that indicate that the new Basel Accords could result in lowering capital by almost 50 percent for some large banks.

It is not just watching it, but I think there is some concern that it may be moving in a direction that you will not have as much capital backup, and therefore, you will have an impact on safety and soundness. Do you have a view on that particular question?

Mr. HENRY. Most certainly. I, just to restate, the importance of having accurate, risk-based capital standards are absolutely crucial to our financial institutions, especially as they increase in complexity and especially as they become counterparties in droves to such things as derivatives and the like. So having accurate risk-based capital standards are crucial.

I would, certainly to the extent that there were quantitative impact studies that suggested that capital standards would be lowered, that they would be widely dispersed, that our U.S. banks would be at a disadvantage competing, and I would like to understand as I suggested to Chairman Shelby how the historical leverage ratio, which has served a useful purpose historically, how that would be factored in.

But most certainly, I would want to understand carefully if these standards resulted in decreased capital.

Senator SARBANES. There is some concern that a limited number of banks, primarily the large ones, will participate in this, that it will create a competitive disadvantage for the next tier of U.S. banks in their competition with the tier that utilizes the Basel II Accords. What is your view of that problem?

Mr. HENRY. I certainly believe it is an issue to stay abreast of and to understand, and I understand that the Treasury in the whole ongoing discussions around Basel have been a keenly interested observer.

I think as it regards all of our banks, whether they are community banks, local financial institutions, money services businesses, credit unions serving such a vital purpose at the community level on up to larger banks, they certainly should have the ability to compete.

I think that is at the core of our regulatory structure is providing for safety and soundness but at the same time providing enough flexibility to compete and innovate and do great things for our consumers. So, I would certainly stay attuned to this if I were confirmed.

Senator SARBANES. The community development financial institutions are under your jurisdiction. They have been quite important in helping to develop economic opportunity in their areas; in fact, it is estimated that they leverage about \$20 in private investment for every dollar of Federal expenditure. And they have been particularly important in helping to meet the needs of low-income people.

Regrettably, the Administration did not ask for CDFI fund money in the budget. The Congress has provided it or appears to be about to provide it as we move through the appropriations process. It seems pretty clear to me that we need responsible commu-

nity-based financial service providers in low-income areas. Hurricane Katrina only underscores this need.

Do you have a view on sustaining or even expanding the CDFI fund as we move ahead?

Mr. HENRY. Thank you for that question. Not being in the Treasury or in our Government while the Strengthening America's Communities Initiative was formulated and CDFI's roll in that, this is difficult for me to discuss the merits of CDFI in isolation.

I think certainly, the goals of Strengthening America's Communities, streamlining things so there are inefficiencies that are taken out of the system, these strike me as good things. As an investor, it is not lost on me the leverage that that particular fund can impart upon a dollar. So, I would say suffice to say for me it is difficult for me to discuss CDFI and the merits of that in isolation apart from the broader SACI initiatives.

Senator SARBANES. Well, I commend that to you, because it seems to me there is a clear role that needs to be played, and I think the experience in the Gulf States only underscores that.

Warren Buffett has warned that derivatives can lead to corporate meltdown and create a daisy chain risk. What do you think about that?

Mr. HENRY. There are a number of people and institutions that are focused on the potential risks and understanding what risks derivatives might impose upon our system.

Senator SARBANES. Are you one of them?

Mr. HENRY. I am one who would like to understand better the potential risks of derivatives. Just some quick observations, if I might: These instruments have grown dramatically into the multi-trillions. There are issues in derivatives of how they are traded and whether or not they are getting held up and clogged up in trading, which is certainly not healthy. There are issues of the implied leverage that derivatives impose upon the system. One does not necessarily borrow when they are an owner of a derivatives contract, but they certainly can have a lot of outstanding exposure that is the equivalent of leverage.

I think it is important that there be disclosure of our financial institutions of their exposures in this regard. I think in my opening statement, I said how much I value disclosure. This in particular is something that warrants some attention, to make sure that these things are properly disclosed, so investors have all the accurate information possible at their fingertips.

I note that the IMF and the Federal Reserve are looking at this. I believe that private groups such as the Corrigan Group this past summer are suggesting measures. So there are a number of intelligent people who believe that this is something to certainly keep their eyes on. And if I could just say last, I view part of Treasury's mission as one that looks holistically at systemic risk and hopefully would be able to stay ahead of real changes in important aspects in the financial community, and I would hope to be a part of that as it regards derivatives that continue to stay abreast of these important changes.

Senator SARBANES. Well, of course, *The New York Times* has this major story about Corrigan and his group's study, and I think it should be right at the top of your priority list.

Let me ask you: The Treasury's Office of Financial Education is under the jurisdiction of the Assistant Secretary for Financial Institutions, and they are charged with providing assistance to the President's Financial Literacy and Education Commission. Secretary Snow is the Chairman of this Commission.

The Commission was tasked with producing a national strategy to promote basic literacy and education. That strategy was due on July 29 but has not yet been submitted. I understand there are some differences amongst Commission members. When do you think we might get that report and move this strategy forward on literacy and financial education?

Mr. HENRY. I am aware of this issue. I am aware of the importance within the Office of Financial Institutions. I am aware of what Title V of the FACT Act mandated. And so, I do not know specifically when that will happen, although my understanding is that they are working hard on it, that it will come shortly, and that they are striving to achieve a consensus.

And it is vital, a national strategy on financial education, and financial education is a crucial component of better informed citizens ultimately making better decisions and ultimately helping society in general. So, I am attuned to that, and if confirmed, I will certainly do my best to push that along.

Senator SARBANES. The agencies that make up your Commission, I understand, have some good proposals, and the Treasury has held them up, and I think you need to address that situation.

Speaking of not meeting deadlines, Mr. O'Brien, let me ask you a couple of questions. The USA PATRIOT Act was signed 4 years ago next month. Section 312, which deals with correspondent accounts, was a major part of Title III of that Act. Treasury was required to issue rules under Section 312. A proposed rule was published in May 2002. Under Secretary Levey in testimony here concurred in the importance of dealing with this issue.

Despite repeated statements to this Committee that Treasury recognizes the importance of this rule, it has not been finalized. Here we are just shy of 4 years from passage of the legislation. The failure is more surprising because the Federal Reserve Board has issued at least two cease-and-desist orders identifying correspondent banking failures of major international banks, and Treasury itself, actually, has used its authority to propose barring correspondent banking in the United States for certain institutions.

Let me ask you: At what point do you think failure to issue these rules would be regarded as a deliberate disregard of a statutory requirement?

Mr. O'BRIEN. Well, certainly, I think the Treasury Department appreciates the responsibility it has to issue these regulations. They are too late. They are overdue. I understand your frustration about that.

Not being at the Treasury at the moment, I do not know precisely what the holdup has been as far as the issuance of the final rule. I can tell you that I definitely hear you loud and clear about the need to get this final regulation out. I think the USA PATRIOT Act has given us many important tools, and we owe it to the community to get the regulation out.

Senator SARBANES. Do you think we can count on you to tell your colleagues at Treasury if you get down there that the Congress is really quite upset about this, and that they need to hear you loud and clear as you transmit that message to them?

Mr. O'BRIEN. I will certainly deliver that message.

Senator SARBANES. Let me move on and ask you about terrorist financing.

The GAO, in a report in November 2003, said, "According to the FBI's Terrorist Financing Operations Section, most if not all terrorist cases involve a financial aspect known as funding nexus, which is normally considered to be a component to the overall negotiation." Then, the GAO went on to say the FBI does not currently isolate terrorist financing cases from substantive international terrorism cases, and its data analysis programs do not designate the source of funding for terrorist financing. In other words, the FBI is focused, as it were, on a broader challenge.

This is part of that, but it gets encompassed within it. It does not get pinpointed. Does Treasury have a database that isolates sources of terrorist financing? Do you know?

Mr. O'BRIEN. I do not know about a single database. Obviously, there is all the reporting that we get, the suspicious activity reporting, the CTR's, et cetera. I know FinCEN is working very hard on a new system, BSA Direct, to help provide investigators and other users of the data much better analytic tools to make use of the data that we do have.

Senator SARBANES. If we do not have this focus currently in how we are proceeding, do you think that we need to have such a focus, to look at terrorist financing as its own phenomenon against which specific efforts can then be directed?

Mr. O'BRIEN. And I am not familiar with the GAO report that you mentioned. I do know that the JTTF's at the FBI each have a terrorist financing person incorporated into the JTTF. The work of TFOS, the Terrorist Financing Operations Section, I think does try to incorporate the financial aspects of terrorist networks or groups that are being investigated.

I think it is hard to separate sometimes the funding of an operation from the investigation of the operation itself. I think it is important as you suggest to make sure that we have the appropriate focus, attention, and resources on the financial dimensions of terrorist investigations, but I think there is some benefit to incorporating that into the overall investigation into a terrorist group or suspect or what have you.

Senator SARBANES. Yes, I do not have any problem with incorporating it into the overall investigation, but I do have a problem if the specifics of the terrorist financing are not being reported out to Treasury and if Treasury does not have a database. After all, you have a lot of the instruments to deal with the terrorist financing problem. I do not know. Is the FBI communicating all of that terrorist financing information to appropriate elements of the Treasury Department?

Mr. O'BRIEN. It is my belief that it is. I think IRS and other agencies are incorporated into the Joint Terrorism Task Forces, and I might add that I think this is one thing that the TFI structure at Treasury, I think, can really bring to the table here.

There is, as you now know, a separate office, the Office of Intelligence, that Assistant Secretary Janice Gardner is leading very capably, and I think that enhanced analytic capability hopefully will address to some degree the concerns that you raise.

Senator SARBANES. The Chairman and I have had some discussions with Treasury about that very point, and it seems to me you have a statute, and you have some authorities that could be very helpful, but we are not sure how fully they are being executed and implemented, and I hope you would place that at the top of your priority list, because we think this is one way of getting at the terrorism problem is to dry up its financing, one very important way, and Treasury has a very big role to play in that regard.

Mr. O'BRIEN. I certainly agree with that.

Senator SARBANES. Thank you, Mr. Chairman.

Chairman SHELBY. Mr. O'Brien, the 2004 intelligence reform bill required a comprehensive study on the Nation's efforts to combat terror financing. That report was due last week. Can we here at the Committee anticipate seeing this report soon once you get, especially once you get down there and get ensconced where you—

Mr. O'BRIEN. I do not know the precise status of that report, but I understand its importance and will do my best to get it moving.

Chairman SHELBY. Well, I thank both of you for your appearance today. You are both eminently qualified, in my judgment, for the positions the President has nominated you for, and we will try to move these nominations expeditiously.

Thank you so much. The hearing is adjourned.

[Whereupon, at 11:07 a.m., the hearing was adjourned.]

[Biographical sketches of nominees supplied for the record follow:]

Emil William Henry, III, 12

American Lyme Disease Foundation Honoree

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
Freedom Institute	Trustee	1994-2004
	Treasurer	1996-2003
American Lyme Disease Foundation	Trustee	1998-2002
The National (golf club)	Member	1996-present
Maidstone (country club)	Member	1988-present
	Treasurer	2002-present
	Governor	1998-present
Links (lunch club)	Member	1996-present
Bedford Golf and Tennis	Member	1995-present
Saint Matthews Church	Member	1993-present

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and inclusive dates of employment.

1991-Present: Gleacher Partners LLC NY, NY Investment Banking/Asset Management

Managing Director, member of Executive and Investment Committees

Founder and Chairman of Gleacher Fund Advisors

Founder Gleacher Mezzanine Fund

Chairman, Asset Management Division

Chairman, Gleacher Investment Corp.

1987-1991 Morgan Stanley & Co., Inc, NY, NY

Associate, Merchant Banking Division

6/86-8/86 Lazard Freres & Co., NY, NY

Summer Associate, Mergers and Acquisitions

1983-1985 First Boston Corporation, NY, NY

Financial Analyst, Capital Markets

During this period I have served on the board of directors of Cullum Companies, Inc (1989-1991), Mentor Clinical Care (1993-94) and the Brown Schools (1997-2005).

**Government
experience:**

List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part time service or positions.

None

**Published
Writings:**

List the titles, publishers and dates of books, articles, reports or other published materials you have written.

None

**Political
Affiliations
and activities:**

List memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Republican Party—I was part of a volunteer team on the ground in New Hampshire for the 2000 primary helping to organize and execute campaign activities. Additionally, I have raised funds for various candidates including President Bush, William Weld and my congresswoman Sue Kelly.

Political

Contributions: Itemize all political contributions of \$500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify specific amounts, dates, and names of recipients.

William Manger	\$2,000	2004
Rob Portman	500	2003
George W. Bush	2,000	2003
George W. Bush	2,000	1999
Al Gore	1,000	1999
Charles Schumer	2,000	1997

Qualifications: State fully your qualifications to serve in the position to which you have been named.

See attached Qualifications sheet

**Future employment
relationships:**

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

I will sever all connections with my current employer consistent with the separation agreement described in my response to question 2 on page 9 below.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

I have no plans to resume employment, affiliation or practice with my current employer.

3. Has anybody made you a commitment to a job after you leave government?

No.

4. Do you expect to serve the full term for which you have been appointed?

Yes.

Yes.

**Potential conflicts
of interest:**

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

Please see description of my separation arrangements with Gleacher Partners.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

Any potential conflicts of interest have been identified and resolved in accordance with the terms and conditions of my ethics agreement with the Department of Treasury, which is documented by letter to Kenneth Schmalzbach, Designated Agency Ethics Official and Assistant General Counsel for General Law and Ethics.

3. Describe any business relationship, dealing or financial transaction (other than tax paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None.

4. List any lobbying activity during the past ten years in which you have engaged in for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

None.

5. Explain how you will resolve any conflict of interest that may be disclosed by your responses to the items above.

Any potential conflicts of interest have been identified and resolved in accordance with the terms and conditions of my ethics agreement with the Department of Treasury, which is documented by letter to Kenneth Schmalzbach, Designated Agency Ethics Official and Assistant General Counsel for General Law and Ethics. Should any potential conflicts of interest arise in the future, I will consult with Treasury ethics officials.

**Civil, criminal and
investigatory
actions:**

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

Two minor civil proceedings:

In 1981, my wife and I—before we were married—were involved in a car accident. We were the last car in a 5 or 6 car pile-up which was weather-related due to rain. I was later named as a defendant in a civil action. I have no records of the action but my recollection is that the insurance companies settled within my insurance policy for a small amount.

In 1995, my wife and I loaned our car to a woman who got into an accident while she was driving. I was not in the car at the time of the accident but, as owner of the car, I was named as a defendant in a civil action. My recollection is that this case was settled within the limits of my policy by the insurance companies. I was never told the amount of the settlement.

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

None.

QUALIFICATIONS

I would be honored to serve my country as Assistant Secretary of the Treasury for Financial Institutions. I believe I possess the relevant professional experience, education, record of achievement and personal skills required to be successful in the job.

At a young age, my parents impressed upon me the importance of public service and the duty of every American to give of themselves—in some way—to our country and return some of the bounties with which we have been blessed. They led by example: my father served as Chairman of the Federal Communications Commission under Presidents Kennedy and Johnson and my mother was appointed by President Clinton as Associate Administrator of the U.S. Small Business Administration. Even though my political orientation diverges from my parents, I have long envisioned participating in public service and, in some small measure, honoring them by following their example.

Professionally, I have spent my entire career in and around some of the most prominent and successful financial institutions on Wall Street, first at The First Boston Corporation, then at Morgan Stanley and, lastly, at Gleacher Partners, where I was one of the early partners of the firm. Gleacher Partners is considered to be among a group of the finest independent investment banking and asset management firms on Wall Street. If confirmed by the Senate, I would bring over 20 years of substantive, practical experience of work in these institutions involving sophisticated areas of finance including mergers and acquisitions, corporate finance, financial restructurings, management buyouts, and equity and debt financings. In these transactions, I have worked with senior managements and their boards of directors in their most complex and strategic financial imperatives. The financings associated with this work typically touch commercial banks, large and small investment banks, insurance companies, full-service diversified financial institutions and investment organizations.

Additionally, I have been a founder of successful and prominent investment businesses. These funds invest directly and indirectly in virtually every corner of the capital markets including public and private equities, senior and subordinated debt, convertible and distressed debt, derivatives, options and futures. Through these businesses I have a long-term working knowledge of most securities and the vast interconnection of markets with financial institutions. I am sensitive to issues of regulation and oversight around these entities and have an appreciation of an array of investors having worked closely with both individual and sophisticated institutional purchasers of these investment products.

Through my experience in all of the above, I understand how financial institutions function and what drives their success and failure. I recognize their place of importance in the stability of our capital markets. I appreciate the need for transparency and disclosure from our financial institutions to ensure confidence, promote proper decision making, and enhance the trust and accountability underpinning these organizations and, ultimately, our financial system.

If I were confirmed by the Senate, I would expect that my skills and experience in finance and investments would be directly applicable to the work of the office of the Assistant Secretary for Financial Institutions and its focus on issues affecting financial intermediaries and on issues of safety, soundness, market structure, condition and competitiveness. I would also hope to compliment the superb talent already resident at the Department of the Treasury and further enhance the agency's ability to execute its mission.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: O'Brien Patrick Michael
 (Last) (First) (Other)

Position to which nominated: Assistant Secretary of the Treasury for Terrorist Financing

Date of nomination: June 30, 2005

Date of birth: 22 January 1966

Place of birth: Saint Paul, Minnesota

Marital Status: Married

Full name of spouse: Maureen Ryan O'Brien

Name and ages of children:

Molly Doreen 18 months, Margaret Theresa 2 months

Education:	Institution	Dates attended	Degrees received	Dates of degrees
	University of Notre Dame	1984-1988	B.A. Economics	1988
	University of Minnesota Law School	1989-1992	J.D.	1992

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships and any other special recognitions for outstanding service or achievement.

Four-year Army ROTC Scholarship
 Magna Cum Laude, Notre Dame 1988
 Cum Laude, University of Minnesota Law School
 Department of Justice Meritorious Service Award, 2001

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
John Carroll Society		1998 to present

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and inclusive dates of employment.

Officer Basic Course, Ft. Benjamin Harrison, IN August – November 1988

Boys' Hope, St. Louis, MO January 1989-June 1989 – house parent in home for troubled youths sponsored by the Jesuits.

Mahoney, Doherty & Mahoney, Minneapolis, MN – law firm summer law clerk, 1990

Best & Flanagan, Minneapolis, MN – law firm summer associate, 1991

Army Reserves – 1989-1996

Law Clerk, Chief Judge Diana E. Murphy, Minneapolis, MN 1992-1994

Associate Attorney, Leonard Street & Deinard, Minneapolis, MN November 1994-May 1996

Associate Independent Counsel, Madison Guaranty Savings & Loan, Little Rock, AR and Washington, D.C., May 1996-August 1999

Counsel, United States Senate Judiciary Committee, Washington, D.C., August 1999-July 2001

Principal Deputy Assistant Attorney General, Legislative Affairs, U.S. Department of Justice, Washington, D.C., July 2001 – January 2003

Counsel to the Director of the Federal Bureau of Investigation, Washington, D.C., January 2003 – September 2004

Senior Counsel to the Deputy Attorney General, Washington, D.C., September 2004 to present

Government

experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part time service or positions.

Army Reserves – 1989-1996

Law Clerk, Chief Judge Diana E. Murphy, Minneapolis, MN 1992-1994

Associate Independent Counsel, Madison Guaranty Savings & Loan, Little Rock, AR and Washington, D.C., May 1996-August 1999

Counsel, United States Senate Judiciary Committee, Washington, D.C., August 1999-July 2001

Principal Deputy Assistant Attorney General, Legislative Affairs, U.S. Department of Justice, Washington, D.C., July 2001 – January 2003

Counsel to the Director of the Federal Bureau of Investigation, Washington, D.C., January 2003 – September 2004

Senior Counsel to the Deputy Attorney General, Washington, D.C., September 2004 to present

Published

Writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

None.

Political

Affiliations

and activities: List memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Republican Party -- no offices held; no active work on campaigns

Political

Contributions: Itemize all political contributions of \$500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify specific amounts, dates, and names of recipients.

George Bush 2000 -- \$500

George Bush 2004 -- \$500

Qualifications: State fully your qualifications to serve in the position to which you have been named. (attach sheet)

Future employment

relationships: 1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

None.

3. Has anybody made you a commitment to a job after you leave government?

No.

4. Do you expect to serve the full term for which you have been appointed?

Yes.

**Potential conflicts
of interest:**

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

Any potential conflicts of interest have been identified and resolved in accordance with the terms and conditions of my ethics agreement with the Department of Treasury, which is documented by letter to Kenneth Schmalzbach, Designated Agency Ethics Official and Assistant General Counsel for General Law and Ethics.

3. Describe any business relationship, dealing or financial transaction (other than tax paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None.

4. List any lobbying activity during the past ten years in which you have engaged in for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

All such activities have been done exclusively as a federal employee.

5. Explain how you will resolve any conflict of interest that may be disclosed by your responses to the items above.

Any potential conflicts of interest have been identified and resolved in accordance with the terms and conditions of my ethics agreement with the Department of the Treasury, which is documented by letter to Kenneth Schmalzbach, Designated

Agency Ethics Official and Assistant General Counsel for General Law and Ethics.
Should any potential conflicts of interest arise in the future, I will consult with
Treasury ethics officials.

**Civil, criminal and
investigatory
actions:**

1. Give the full details of any civil or criminal proceeding in which you were a defendant
or any inquiry or investigation by a Federal, State, or local agency in which you were
the subject of the inquiry or investigation.

None.

2. Give the full details of any proceeding, inquiry or investigation by any professional
association including any bar association in which you were the subject of the
proceeding, inquiry or investigation.

None.

QUALIFICATIONS:

I believe that I have the desire, experience, and personal skills necessary to succeed as Assistant Secretary of the Treasury for Terrorist Financing.

I have long had a desire to participate in public service and the vast majority of my professional career has been in the public sector. Like many Americans, I was greatly affected by the events of September 11th, 2001. At the time, I was serving as a Deputy Assistant Attorney General for Legislative Affairs in the Department of Justice (DoJ). The attacks on our country made me want to get more involved in protecting the public from the threat of terrorism. Since that time, I have sought opportunities to serve in positions within the United States Government that have furthered its efforts to fight terrorism.

The experience I have gained at DoJ will greatly assist me in performing my duties at the Treasury Department should the Senate confirm me. Currently, as Senior Counsel to the Deputy Attorney General, I work directly on terrorist financing issues for DoJ. I represent DoJ on the inter-agency Terrorist Finance Policy Coordinating Committee (PCC). The PCC is an interagency body that helps focus and coordinates the overall efforts of the United States Government to combat illicit financing of terrorist groups and individuals. I have worked closely with Treasury officials in improving the coordination between our agencies and in jointly bringing to bear our authorities to have maximum impact on those who seek to fund terrorism. My broad experience within DoJ and in Congress provides me a background from which to be an effective member of the growing Treasury effort to contribute to our national security.

Finally, I have the personal skills and leadership that the job requires. I have worked hard my entire career to treat people fairly and to provide my best judgment to those I work with candidly and honestly. Particularly in the area of national security, agency officials must always keep the national interest in mind while serving their agency. If confirmed by the Senate, I will be an effective leader and representative of the fine people at Treasury who work so brilliantly in this area -- while at the same time ensuring that Treasury is a constructive and valuable member of the interagency effort that is necessary to prevent future acts of terrorism. Only by bringing all our national powers to bear -- diplomatic, economic, military, and law enforcement -- can we maximize our ability to protect the American people. My attitude and professionalism can contribute significantly to that effort.